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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,258

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Ikuo Tachibana

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08/06/2009

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EXAMINER

HANRAHAN, BENEDICT L

ART UNIT

PAPER NUMBER

3761

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/596,258	<b>Applicant(s)</b> TACHIBANA, IKUO	
	<b>Examiner</b> BENEDICT L.C. HANRAHAN	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/7/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claims Status***

1. Claims 1-7 remain pending.

### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be “material to patentability as defined in 37 CFR 1.56.”

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7 rejected under 35 U.S.C. 102(b) as being anticipated by Ono et al. (EP 0 763 353 A2; hereinafter Ono).

5. Regarding claim 1, Ono discloses a worn article that is capable of being worn by a user or wearer. As schematically shown in Fig 2, the article comprises a fitting portion (2), an absorbing portion (3), and a cover sheet (20A), wherein the absorbing portion (3) includes a first end portion (18 in Fig. 3) and a second end portion (19 in Fig. 3). In Figure 3, the cover sheet (20A)

Art Unit: 3761

is covering at least a portion of an exterior of the first end portion (18) wherein the cover sheet is at least partially removable (Fig 2 shows the fasteners 36A and 36B for releasable securement) to expose the first end portion of the absorbent portion to an exterior of the worn article for detaching the absorbent portion from the fitting portion (Col 3, lines 26-37). It is inherent that the first end portion (18 in Fig 2) of the absorbent portion (3 in Fig 2) is detachable from the fitting portion because they are currently attached as shown in Figure 2 and a structural element may be detached from another structural element.

6. Regarding claim 2, the "reinforcing flap" or cover sheet (20A) is inherently capable of being torn. Ono et al. also includes fasteners (36A and 36B) that are on the absorbent portion (3). The fasteners (36A and 36B) detachably fasten together the absorbent portion (3) and the fitting portion (2) in a vicinity of the cover sheet (20A).

7. Regarding claim 3, as schematically shown in Fig. 2, the worn article in Ono et al. also comprises an abdominal-side (6 and 27) and a back-side (7) of the fitting portion (2) in Fig. 2. The first end (18) of the absorbent portion (3) is connected to the abdominal- side (6 and 27) of the fitting portion (2) in Fig. 2. The second end portion (19 in Fig. 2) of the absorbent portion (3) is connected to the back-side portion (7 in Fig. 2) of the fitting portion (2). The first end portion (18) is detachably touch-fastened to the fitting portion (2) through fasteners (36A and 36B). The "reinforcing flap" or cover sheet (20A) is covering the first end portion (18 in Fig. 3) of the absorbent portion (3) and is tearable.

8. Regarding claim 4, the worn article in Ono et al. comprises a first end portion (18) of the absorbent portion (3) that is layered where the inner surface (constituted by the surface which faces portion 30 in Fig. 2) is facing an outer surface (constituted by the surface which faces

Art Unit: 3761

element 20A) of the abdominal portion (6,27) of the fitting portion (2), and an inner surface of the cover sheet (20A) is facing an outer surface of the absorbent portion (3) in Fig. 2. The outer surface of the cover sheet (20A) is constituted by the surface that is facing the torso of the wearer of the worn article while being worn. As schematically shown in Fig. 2, fitting portion (2), the absorbent portion (3), and the cover sheet (20A) are constructed in a layered fashion.

9. Regarding claim 5, the Ono et al. worn article comprises a "reinforcing flap" or cover sheet (20A) having a tearable portion capable of being used to tear the cover sheet (20A) and, if torn, at least a portion of the first end portion (18 in Fig. 3) of the absorbent portion (3) would inherently be exposed. Furthermore, it is inherent that the coversheet material (Col 3, lines 21-26) is capable of being torn.

10. Regarding claim 6, the Ono et al. worn article comprises a "reinforcing flap" or cover sheet (20A) which covers at least an upper edge of the first end portion (18) of the absorbent portion (3).

11. Regarding claim 7, as best understood without detailed written support, the Ono et al. reference discloses the structure of the absorbent portion (3) sandwiched between the cover sheet (20A) that is inherently tearable and the "web" or fitting portion (2), where the "web" is best understood by the examiner as material forming the fitting I portion (2). The method as claimed, therefore, would be inherent during operation and use of the Ono et al. device.

### ***Response to Arguments***

13. Applicant's arguments filed 4/1/2009 have been fully considered but they are not persuasive. Applicant argues that Ono et al. does not disclose an absorbent secured to a fitting

Art Unit: 3761

portion or a cover sheet covering at least a portion of an exterior surface the first end portion of the absorbent, wherein the cover sheet is at least partially removable to expose the first end portion of the absorbent to an exterior of the wear article for detaching from the fitting portion as set forth in claim 1 and that nothing in Ono et al. has been shown to indicate that such flaps have a tearable portion formed therein as set forth in claim 5. As discussed above, the cover sheet is partially removable from the first end portion of the absorbent portion (Fig 2 shows the fasteners 36A and 36B for releasable securement). It is inherent that the first end portion (18 in Fig 2) of the absorbent portion (3 in Fig 2) is detachable from the fitting portion because they are currently attached as shown in Figure 2 and a structural element may be detached from another structural element. It is also inherent that the coversheet material (Col 3, lines 21-26) is capable of being torn. For these reasons, the claims maintain their rejected status.

### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENEDICT L.C. HANRAHAN whose telephone number is (571)270-7854. The examiner can normally be reached on Monday-Friday, 8AM-5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BENEDICT L.C. HANRAHAN/  
Examiner, Art Unit 3761

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art Unit 3761